

(1995) 03 KL CK 0053
In the High Court Of Kerala
Case No : M.F.A. No. 456 of 1986 A

State of Kerala and Another	Vs	APPELLANT
Komalavally		RESPONDENT

Date of Decision : 06-03-1995

Acts Referred:

Kerala Private Forests (Tribunal) Rules, 1972 — Rule 3
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 13, 3, 6, 7, 8
Kerala Private Forests (Vesting and Assignment) Rules, 1974 — Rule 2A, 2A(2)

Citation : (1995) 03 KL CK 0053

Hon'ble Judges : N. Dhinakar, J; K.T. Thomas, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; K.S. Rajamony, for the Respondent

Final Decision : Allowed

Judgement

K.T. Thomas, J.—An application filed u/s 8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short "the Vesting Act") was allowed by a Forest Tribunal holding that the land involved therein is not a private forest. This appeal by the State of Kerala and custodian of vested forests is in challenge of the said order.

2. The property involved in the case has an extent of about 3 acres and is lying in survey No. 1206 of Thiruvallamala Village in Thalappally Taluk (Trichur District). Respondent advanced a case that she was cultivating the land for a long time and that on 6th October 1981 some forest officials resisted the workmen of the Respondent who were carrying out agricultural operations in the property. Such resistance was made under the pretext that the land was private forest which vested with the Government. Respondent filed the application for a declaration that it is not a private forest, nor has any notification been issued in respect of the same.

3. According to the Government, the disputed land is covered by a notification

issued under Rule 2-A of the Kerala Private Forests (Vesting and Assignment) Rules, 1974 (for short "the Vesting Rules") and the said land has vested with the Government under the provisions of the Vesting Act.

4. Government produced Ext. B-1 notification dated 4th March 1980 before the Forest Tribunal and claimed that the disputed land was covered by the said notification. Forest Tribunal did not accept the said contention of the Government and held that the disputed land is not covered by Ext. B-1 notification. Yet the Forest Tribunal proceeded to consider the claim on merits and granted the reliefs prayed for in the application. It also found that the application is not hie by the period of limitation.

5. Learned Government Pleader contended that the Forest Tribunal has acted without jurisdiction and that the finding regarding limitation is totally devoid of merits. It was further contended that the land in dispute would squarely fall within the ambit of Ext. B-1 notification.

6. In appreciating the above contention a reference to the relevant provisions of the Vesting Act is necessary. Section 3 of the Vesting Act declares that with effect from the "appointed day" all private forests shall stand transferred to and vested in the Government. "Appointed day" is 10th May 1971. Section 6 conferred a duty on the custodian of vested forest to cause the boundaries of such vested forests to be demarcated as soon as the appointed day is fixed. Rule 2-A of the Vesting Rules has directed the publication of a notification in certain offices specifying the details of the private forests so vested, the boundaries of which have been demarcated with reference to survey numbers and subdivision numbers. Such notification should be published immediately after effecting the demarcation.

7. In this case Government adopted the stand, as mentioned above, that the land was demarcated immediately prior to Ext. B-1 notification and hence the notification contained the said land also. As the definite stand of the Respondent is that the disputed land is not included in the notification, it is for consideration whether Forest Tribunal has got any jurisdiction over the disputed land unless this land is covered by notification.

8. For deciding the said question a reference to Section 7 of the Vesting Act which deals with Constitution of Tribunals has to be made. The said provision confers power on the Government to constitute Forest Tribunals "for the purposes of this Act". Sub-section (4) reads thus:

The Tribunal shall decide all matters within its competence and may review any of its decisions in the event of there being a mistake on the face of the record or correct any arithmetical or clerical error therein....

Sub-section (4A) declares that the "decision of the Forest Tribunal "on any matter within its jurisdiction" shall be final and conclusive. A reading of those Sub-sections makes it clear that Forest Tribunal has jurisdiction only to decide

matters "within its competence". What are the matters within the competence of the Forest Tribunal? Section 8 deals with settlement of disputes. Sub-section (1) provides that where any dispute arises as to whether any land is a private forest or not; or any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government, may, "within such period as may be prescribed"" apply to the Tribunal for decision of the dispute.

9. The competence of the Forest Tribunal is thus restricted to decide the dispute on an application made by a person who claims either that the land is not a private forest or that the private forest has not vested in the Government. Such an application can be filed "within such period as may be prescribed". What happens if the application was not filed within such period? We have no doubt that remedy of the person is barred. If a cause of action arose and the person concerned failed to apply to the Forest Tribunal within the period of limitation, he cannot approach the Civil Court thereafter. But the position is different if, in respect of a cause of action there is no period of limitation. Can the Forest Tribunal entertain any application in such a situation? The only provision by which a person can approach the Forest Tribunal is contained in Section 8 of the Vesting Act. It circumscribes the right of a person to approach the Forest Tribunal within a particular period. The corollary is that if a cause of action cannot be tagged with a period as envisaged in Section 8 the remedy of the person in respect of such cause of action is not in the Forest Tribunal.

10. Under Rule 3 of the Kerala Private Forests (Tribunal) Rules, 1972 (for short "the Tribunal Rules") an application u/s 8 shall be presented to the Tribunal "within sixty days from 6th August, 1981 or from the date of publication of the notification under Sub-rule (2) of Rule 2A of the Vesting Rules in respect of the land to which the dispute relates "whichever is later". Sixty days from 6th August 1981 stood expired before 6th October 1981. In a case where the cause of action did not arise before 6th October 1981 the only other period within which the concerned person can approach the Forest Tribunal is 60 days from the date of publication of the notification under Rule 2-A of the Vesting Rules.

11. In the present case there was no question of making any application within 60 days from 6th August 1981 because the obstruction was caused by the forest officials only after that period. For the Respondent no cause of action arose before the said period. So the Respondent could have applied only within 60 days from the date of publication of the notification if the notification covered the disputed land also. In other words, if there is no notification as far as the disputed land is concerned, no person can file an application before the Forest Tribunal in respect of such non-notified land. Here again the crucial question is whether Ext. B-1 notification takes in the disputed land also.

12. Forest Tribunal held that it does not. After arriving at such a finding Forest Tribunal should not have proceeded further as the Tribunal has no competence to decide this matter.

13. Learned Counsel for the Respondent contended that since the Civil Court's jurisdiction is completely barred, he was compelled to approach the Forest Tribunal for reliefs. The bar of the Civil Court is made through Section 13 of the Vesting Act which reads thus:

13. Bar of jurisdiction of Civil Court. Except as otherwise provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question or to determine any matter which is, by or under this Act, required to be decided or dealt with or to be determined by the Tribunal, the custodian or any other officer.

The above section debarred the Civil Court from exercising jurisdiction in respect of any matter which is required to be decided or dealt with or to be determined by the Forest Tribunal. Its corollary is that when a matter is not required by the Act to be decided by the Forest Tribunal there is no bar for the Civil Court to entertain the dispute. In other words, when there is no notification under Rule 2-A of the Vesting Rules in respect of a land over which the dispute was raised on or after 6th October 1981 then the Forest Tribunal has no jurisdiction to deal with the dispute concerning that land. If so, Civil Court has ample jurisdiction to determine such dispute. We cannot stretch the swipe of the ban beyond the contours of Section 13 of the Vesting Act.

14. As the Forest Tribunal held that Ext. B-1 notification did not contain the disputed land the burden is on the State and custodian to show that notification related to the disputed land also. Learned Government Pleader could not satisfy us that Ext. B-1 notification related to the disputed land. The only survey number which could be picked up from several survey numbers included in Ext.B-1, having some proximity with the disputed land is "survey 1206/1-Part". There is no evidence that disputed land falls within the said subdivision. No effort was made to show that the disputed land falls within the said subdivision portion notified. Thus, there is no escape from conclusion on the evidence now available that Forest Tribunal ought not have proceeded further with the adjudication of the dispute raised by the applicant.

15. We, therefore, allow this appeal and set aside the order of the Forest Tribunal. We dismiss the application filed by the Respondent. But we make it clear that this dismissal is without prejudice to the Respondent's right to approach the Civil Court for appropriate reliefs. However, the above findings are without prejudice to the Civil Court's power to decide whether the disputed land is covered by any notification issued under Rule 2-A of the Vesting Rules.